

Automated Commercial Environment—Requirements Recommendation

Date:	November 5, 2001
Number:	REV-010
Requestor:	Trade Support Network (TSN) - Revenue Committee
Customs Co-Chair:	Robert B. Hamilton
Trade Co-Chair:	James Phillips

Requirement:

Create an accounting component to ACE to ensure that any and all refunds on payments by the surety under its bonds will be tendered directly to the surety with applicable interest, rather than to the bond principal. This component would embrace all payments by the surety under its bonds including increased duties, estimated duties, Section 1592(d) duties, taxes, fees, liquidated damages, and penalties.

Business Need

When sureties tender duties, liquidated damages, and applicable penalties to Customs in accordance with their bond obligations, they, and not the bond principal, are legally entitled to directly receive whatever refunds are determined to be owed. This is the case even where the importer has filed an administrative protest against liquidated duties or a petition against any other bill. The ACE accounting system should be programmed to record and track payments made by the sureties and automatically generate refunds of such payments to them. In tendering duties, liquidated damages, taxes, fees and penalties to Customs, sureties should not have to incur the expense and time in recovering misdirected refunds from recalcitrant principals, which in effect increases their bond risks.

Technical Need

The Customs Regulations provide that any refunds of excessive duties, taxes, fees or interest shall be certified for payment to the importer or record, unless the surety (or some other payer) submits evidence of payment to Customs, upon the default of the principal, of amounts previously determined to be due on the same entry or transactions. The ACE should be programmed to record and track, on an entry or transaction basis with corresponding bond number, all payments made by the surety to ensure that refunds are not made to the importer of record or some other party. The accounting program should automatically “certify” the bill-paying surety for a potential refund on associated entries or transactions.

Benefits

The benefits to the Government are that a defaulting importer of record will not be rewarded with a refund of payments made by the surety or some other payer. At the same time, sureties will not be burdened with costly and unnecessary collection suits to recover monies that it tendered to Customs upon demand. The increased risk associated with the possibility of a misdirected refund could lead to higher bond amounts and higher premiums for importers. A program to identify, track and certify bill payers for potential refunds will streamline the refund process and ensure that the actual bill payer obtains the appropriate refund.

Risks

Devise a system to ensure that payments tagged or certified for potential refunds correspond to appropriate bond periods on continuous bonds. The risk of incorrect refunds could be addressed by the automatic issuance of a pre-refund report, based upon Customs records of payment and corresponding bond coverage that would be reviewed and certified by sureties prior to issuance of a refund. Customs should work closely with the TSN groups during the design and implementation of the program to ensure that the system does not cause significant delays in the issuance of refunds.

Related Subcommittees

Priority: **Critical** ☒ **High** ☐ **Medium** ☐ **Low** ☐

Customs Use Only

Approved ☐

Not Approved ☐

Further Evaluation Required ☐